IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

S.T.Rev.No.110 of 2005

T.A.No.418/2004 OF KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-I, ERNAKULAM (ORDER DATED 15-10-2004)
(ASSESSMENT YEAR 2001-02)

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REVISION PETITIONER/APPELLANT/ASSESSEE:-

M/S.THE CAKE HOUSE,
MAJOR INDUSTRIAL ESTATE,
KALAMASSERY, ERNAKULAM DISTRICT.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENT/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES DEPARTMENT,
GOVT. SECRETARIAT,
TRIVANDRUM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & P.N.Ravindran,J.

S.T.Rev.No.110 of 2005

Dated, this the 14th day of December, 2007

ORDER

H.L.Dattu,C.J.

M/s. The Cake House, Kalamassery is the assessee in this Sales Tax Revision.

(2) The assessee questions the legality or otherwise of the orders passed by the Sales Tax Appellate Tribunal, Additional Bench-I, Ernakulam in T.A.No.418 of 2004 dated 15th October, 2004.

(3) The assessee has framed the following questions of law for our consideration and decision. They are as under:

> (i) Whether on the facts and in the circumstances of the case the Tribunal was justified in sustaining the addition made by the lower authorities.
>
> (ii) Whether on the facts and in the circumstances of the case the tribunal was justified in holding that a pattern of suppression was established in the case of the appellants.
>
> (iii) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the petitioners were maintaining duplicate copy of bills.
>
> (iv) Whether on the facts and in the circumstances of the case the Tribunal was justified in passing a remark against the petitioners without verifying the report of the inspecting officers.
>
> (v) Whether on the facts and in the circumstances of the case the appellate authority was justified in endorsing the findings of the lower authorities without making an independent analysis of the facts".

(4) The factual matrix are:

(i) The assessee is a dealer, registered under the provisions of the Kerala General Sales Tax Act, 1963 ("Act" for short). He is a dealer in Cake and Bread. The assessment year in question is 2001-02.

(ii) The Inspecting Wing of the Department had inspected the business premises of the assessee on 20.12.2001 and on such inspection, had detected unaccounted sales and unaccounted purchases. The total suppression was in a sum of Rs.4,32,324.75.

(iii) The assessee had compounded the offence departmentally, in lieu of the prosecution proceedings.

(iv) The assessee had filed its annual returns, conceding a total and taxable turnover of Rs.45,78,782.20 and Rs.41,21,598.90 respectively. The assessing authority had rejected the books of accounts in view of the report received from the Inspecting wing of the Department. After such rejection of the return filed by the assessee, the assessing authority had issued pre-assessment notice to the assessee proposing to make an addition of three times of the suppressed sales and purchases. After receipt of the pre-assessment notice, the assessee has filed his objections, *inter alia*, bringing to the notice of the assessee that the proposal so made is contrary to the conceded total and taxable turnover. The assessing authority, after considering the explanation so offered by the assessee, has proceeded to pass an order by way of best judgment assessment and in that has made an addition of three times the suppression detected to the total and taxable turnover conceded by the assessee. After such addition, has quantified the tax liability.

(v) The orders passed by the assessing authority is confirmed by the

first appellate authority as well as by the Tribunal. Aggrieved by these orders, the assessee is before this Court in this Sales Tax Revision.

(5) Before we refer to the arguments canvassed by Sri.E.P.Govindan, learned counsel appearing for the assessee, we intend to remind ourselves to the observations made by the apex Court in the case of *Commissioner of Sales Tax, Madhya Pradesh* v. *H.M.Esufali H.M.Abdulali* [(1973) 32 STC 77]. In the aforesaid decision, the apex Court has stated as under:

> "In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the "best judgment" assessment, no doubt, should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. *Prima facie*, the assessing authority is the best judge of the situation. It is his "best judgment" and not of anyone else. The High Court could not substitute its "best judgment" for that of the assessing authority".

(6) This settled legal position is not reversed by any subsequent decision by the apex Court.

(7) Sri.E.P.Govindan, learned counsel appearing for the assessee, would submit that since the inspection was conducted by the Inspecting Wing of the Department on 20.12.2001, there is no justification for the assessing authority to have made an addition of three times the suppressed purchases and sales. Further it is stated that, the addition made is excessive and, therefore, this Court should reduce the addition so made by the

assessing authority.

(8) Per contra, Sri.Mohammed Rafiq, learned Senior Government Pleader, ably justifies the impugned order.

(9) The facts are not in dispute. The Inspecting Wing of the Department had inspected the business premises of the petitioner nearly after six months from the date of commencement of the assessment year. After such inspection, the Inspecting Wing of the Department had detected a pattern of suppression of sales and purchases in a sum of Rs.4,32,324.75. This inspection, as we have already noticed, was after six months from the date of commencement of the assessment year.

(10) After such inspection, the assessee has volunteered to compound the offence departmentally by paying the compounding fee, in lieu of the prosecution.

(11) The assessee had filed his annual return for the assessment year 2001-02 and in that had conceded a total and taxable turnover of Rs.45,78,782.20 and Rs.41,21,598.90 respectively. The assessing authority has rejected the books of accounts in view of the report of the Inspecting Wing of the Department. The assessing authority has, thereafter, proceeded to complete the best judgment assessment. While doing so, the assessing authority has not whimsically made addition to the conceded turnover of the dealer. He has taken into consideration the pattern of suppression by the assessee and has made an addition of three times the suppression detected to the total and taxable turnover conceded by the assessee. After such addition, has quantified the tax liability. It is his estimation and it is his best judgment assessment and that best judgment assessment should not be replaced by this Court by keeping in view the dicta of the apex

Court in *H.M.Esufali's case.*

(12) The appellate authority as well as the Tribunal also have taken the view that the assessing authority is justified in making an addition of three times the suppressed turnover detected. These are all findings of fact and those findings of fact cannot be disturbed by this Court in exercise of its powers under Section 41 of the Act.

(13) In that view of the matter, we do not find any ground to interfere with the orders passed by the Tribunal. Therefore, the questions of law framed by the assessee requires to be answered against the assessee and in favour of the Revenue.

(14) Consequently, I.A.No.596 of 2005 is dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

P.N.Ravindran
Judge

vku/-